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SUPREME COURT, U.S.

No. 868

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IN THE

SUPREME COURT

OF THE

United States

October Term, 1957

In the Matter of:
AQUA HOTEL CORPORATION
(in reorganization),
Bankrupt.

AQUA HOTEL CORPORATION v.
McLAUGHLIN,
Bankrupt.

MOTION TO STRIKE BRIEF OF "INTERVENOR RALPH J. WEILER, IN RESISTANCE TO PETITION FOR WRIT OF CERTIORARI"

MORRIS LAVINE
215 W. 7th Street
Los Angeles 14, California
Attorney for
Aqua Hotel Corporation
Patricia Springer and
John Cashin,
Creditors and Petitioners.

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COMES NOW AQUA HOTEL CORPORATION, Patricia Springer and John Cashin and move to strike the brief of Ralph J. Weiler on the following ground:

Intervenor was allowed to intervene in the Circuit Court stating he wished to combat one question only, namely, 'the right of petitioners to a jury trial.' In the Circuit Court his brief stated in its opening paragraph:

"The appeal in this case insofar as this Intervenor Ralph J. Weiler is concerned, interests us only on the question of whether or not the District Court erred in adjudging the Aqua Hotel Corporation to be a bankrupt without according to it a jury trial."

Weiler therefore has no right to appear in this court or to raise any other question and his brief in opposition should be stricken.

Weiler is a secured creditor, holding Trust Deeds on the property. He seeks to acquire the property by sale under his power of sale in his Trust Deeds and to wipe out all other creditors, including petitioners. He therefore opposes all plans of reorganization for which Chapter X was passed by Congress.

Contrary to his contention the brief raises important questions of bankruptcy law which have not been, but should be determined by this Honorable Court:

(1) Should a Corporation be adjudicated bankrupt when it applies for *reorganization* under Chapter X of the Bankruptcy Act when it appears to have more assets than liabilities although it cannot immediately pay its debts?

(2) Should the District Court act to adjudicate the corporation bankrupt without first obtaining an appraisal of the property, the only way in which it can logically and sensibly act, based on evidence.

(3) Did the Circuit Court err in refusing to remand the case to the District Court for an appraisal of the property and assets so that both the District Court and the reviewing court can determine from evidence what is fair, just and feasible?

(4) Is insolvency essential to a determination of bankruptcy of a corporation?

(5) Were the creditors entitled to separate notice and hearing on the question of whether the corporation should be adjudicated bankrupt after a hearing on whether a plan of arrangement should be adopted?

(6) Were the petitioners entitled to trial by jury on the question of insolvency?

(7) Were the proposed plans of reorganization fair, equitable and feasible and did the District Court err in refusing to allow petitioners to submit their plans to the creditors for their consents?

(8) Did the Circuit Court err in holding that our appeal time had run out one day for consideration of the plans of arrangement and the District Court's rejection of them when it was but one of the items considered by the trial court, and that court signed an order never served on petitioners or their counsel disallowing the plans of arrangement?

These are all important questions of bankrupt law which should be determined by this Court.

For which reasons we pray that the brief of Intervenor Weiler be stricken and that certiorari be granted and that petitioners be permitted to proceed on the original record.

Respectfully submitted,

MORRIS LAVINE,

Attorney for Petitioners,
Aqua Hotel Corporation, Inc.
Patricia Springer, Creditor
John Cashin, Creditor
and Principal Stockholders